

In the Supreme Court of the State of Alaska

Rand J. Hooks Jr.,
Appellant,

v.

Helen Stephan,
Appellee.

Supreme Court No. S-17707

Order Returning Appellant's Brief

Date of Order: **7/2/2020**

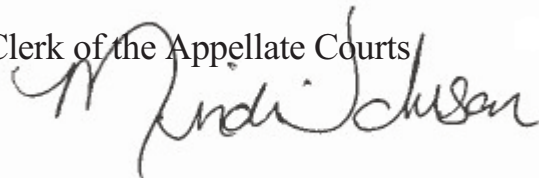
Trial Court Case No. **3AN-19-05932CI**

Appellant's corrected brief, filed on **6/30/2020**, is returned for correction, based on the following reasons specified by the law clerk who reviewed the brief and excerpt for technical compliance with Appellate Rules 210 and 212.

On or before **7/15/2020** appellant shall file the original unbound corrected brief and one unbound copy of the corrected excerpt of record by that date. Appellant shall also email .pdf versions of the brief and excerpt to mjohnson@akcourts.us and pleadings@akcourts.us.

Entered under Appellate Rule 102(f).

Clerk of the Appellate Courts



Mindi Johnson, Deputy Clerk

Distribution:

Mail:
Hooks, Rand J.

Email:
Helm, Richard A.

Appellant's opening brief is **REJECTED** because it does not comply with the requirements of Appellate Rule 212. In order to be accepted, this brief must at least present the issues on appeal from the superior court and request for specific relief from an appellate court. The brief must describe the superior court proceedings, the disposition of the case and a statement of issues for review. There is no indication of what happened in the superior court and no request for specific relief from an appellate court. In addition, the brief must include citations to an excerpt or the record for every factual assertion. Currently, there are no citations for the factual assertions. In addition, appellant failed to submit an excerpt of record as required by Appellate Rule 210(c).

1. Every statement of fact in the brief must be followed by a citation to the page in the record that shows the fact is true. AR 212(c)(1)(G) and (c)(8) (attached). The brief is full of factual assertions that are not supported by citations to the record. For example, nearly every sentence in the Facts and Procedural History sections are statements of fact. There is no citation to the record supporting any of these statements.

For each factual assertion, appellant may cite either to the record itself, or to his excerpt of record. The record is the actual superior court file. The pages of the record have been numbered and it is currently located in the appellate clerk's office in Anchorage. Appellant may cite to these page numbers to support his factual assertions (R. ____).

Alternatively, appellant may cite to his excerpt of record (Exc. ____). The excerpt of record is a separate document from the brief, with a separate cover. The excerpt contains copies of documents that are found in the record, that is, documents that were before the superior court. Appellant should review Appellate Rule 210(c) (attached) which states what documents are required to be contained in the excerpt. The Clerk's Instructions for Preparation of Excerpts (also attached) provide additional helpful information.

2. Appellant should cite to legal authority (statutes and case law, for example) in support of his legal arguments.

The Appellant is required to file an excerpt and must comply with Appellate Rule 210(c):

1. See Appellate Rule 210(c) for a list of the documents that must be included in the excerpt of record.

2. The excerpt must contain a cover page. The cover page must include: (1) the name of the appellate court and the appellate case number, (2) case title, (3) nature of the proceeding, (4) name of the court, judge, and case number in the lower court, (5) excerpt title, (6) volume number, (7) your name, address, and phone number.

3. You need a table of contents that lists all of the documents that you are including in the excerpt. The table of contents must contain the page number on which the first page of the document appears along with the date the document was produced.

4. The excerpt should be ordered by date, with the oldest document appearing first and the most recent document appearing last.

5. Please see the attached **CLERK'S INSTRUCTIONS FOR PREPARATION OF EXCERPTS** for helpful information about preparing your excerpt of record.

If appellant is unsure how to make the changes required in this notice, he may contact the Appellate Clerk's Office at (907)264-0612 for guidance.

Rule 210. Record on Appeal.

(c) Excerpts of Record.

(1) *Duty to Prepare.*

(A) Each party shall file and serve an excerpt of record with the party's brief.

(B) In cases involving multiple appellants or appellees, each side shall prepare a single excerpt of record. In a case involving multiple appellants who are filing separate briefs, the appellant who filed the first notice of appeal shall prepare and file the excerpt for the appellants, unless the appellants otherwise agree. In a case involving multiple appellees who are filing separate briefs, the appellees shall decide among themselves which appellee shall prepare and file the excerpt for the appellees. Ten days prior to the date on which a side's briefs are due, the parties who are not responsible for preparation of the excerpt shall transmit to the responsible party a list of documents to be included in the excerpt. The responsible party shall include in the excerpt all documents which are specified by the other parties, provided such documents are in the record. A party who fails to transmit a list of documents to the responsible party by the 10 day deadline waives the right to designate documents for inclusion in the excerpt. The responsible party shall mail a copy of the excerpt to each of the other parties on that side six days before the date the briefs are due, or deliver a copy of the excerpt three days before the date the briefs are due, so that the other parties may include the appropriate citations in their briefs. The cost of copying and mailing the excerpt shall be borne equally by all parties on the side.

(C) A cross-appellant or cross-appellee who elects to file a single brief shall file a single excerpt with that brief. A cross-appellant who makes this election shall include in the excerpt those documents that are properly included in an appellee's excerpt under Rule 210(c)(2). A cross-appellant who elects to file separate briefs shall file and serve notice of this election within 10 days after service of the notice of the due date for appellant's brief. If a cross-appellant makes this election, the cross-appellant and the appellant shall be treated as co-appellants filing separate briefs and shall prepare and submit a combined excerpt as required by Rule 210(c)(1)(B). The cross-appellee and the appellee shall be treated as co-appellees filing separate briefs for purposes of that rule.

(2) Contents.

(A) ***Appellant's Excerpt.*** The appellant's excerpt of record must contain the following parts of the record:

- (i) all charging documents, or the petition or complaint, counterclaim, crossclaim, and answer setting out the issues to be tried;
- (ii) the judgment or interlocutory order from which the appeal is taken;
- (iii) other orders or rulings sought to be reviewed;
- (iv) supporting opinions, findings of fact, conclusions of law, or other statements showing the reasoning of the trial court and, if appellant claims that the written findings of fact or conclusions of law are insufficient or erroneous, a copy of the pages of the transcript at which any relevant oral findings of fact and conclusions of law are recorded;
- (v) if the appeal is from the grant or denial of a motion, relevant portions of briefs, memoranda, and documents filed in support of and in opposition to the motion;
- (vi) if the appellant is challenging the admission or exclusion of evidence, the giving or failure to give a jury instruction, or another oral ruling or order, a copy of the pages of the transcript at which the evidence, offer of proof, ruling, or order and relevant discussion by the court, and any necessary objection are recorded;
- (vii) if the appeal is from a final decision in a child-in-need-of-aid proceeding under AS 47.10.080(c) or a case involving the termination of parental rights under AS 25.23.180, the predisposition report prepared in the case; and
- (viii) specific portions of other documents in the record, including documentary exhibits, that are referred to in appellant's brief and essential to the resolution of an issue on appeal.

(C) ***Portions of the Transcript.*** Parties may also include in the excerpt selected pages of the transcript that are critical to the appeal.

(D) ***Items Not to Be Included in the Excerpts.*** Pages of the transcript and briefs and memoranda filed in the trial court may only be included in the excerpts if required under (c)(2)(A) or permitted under (c)(2)(C).

The fact that parts of the record are not included in the excerpts does not prevent the parties or the appellate court from relying on those parts.

(3) ***Supplemental Excerpts.*** Appellant may file and serve a supplemental excerpt of record with appellant's reply brief or within the time specified for filing a reply brief. No other supplemental excerpt may be filed except by leave of the appellate court granted on motion, or at the request of the appellate court. A supplemental excerpt may not include parts of the record that appear in another excerpt filed in the appeal.

(4) ***Form, Filing and Service.*** Each party's excerpt of record must be arranged in chronological order, must be bound separately from the party's brief, and must contain a table of contents at the beginning of the first volume. The excerpt and the table of contents must be in the form specified in the Clerk's Instructions for Preparation of Excerpts published in these rules. One copy of the excerpt must be filed and served with the party's original brief. Six copies of the excerpt must be filed with the bound copies of the brief, and one copy must be served on counsel for each party separately represented. The appellate court may specify the filing or service of a different number of copies than required by this rule.

Rule 212. Briefs.

(c) Substantive Requirements.

(1) ***Brief of Appellant.*** The brief of the appellant shall contain the following items under appropriate headings and in the order here indicated:

(A) A table of contents, including the titles and subtitles of all arguments, with page references.

(B) A table of cases alphabetically arranged, statutes, and other authorities cited, with references to the pages of the brief where they are cited.

(C) The constitutional provisions, statutes, court rules, ordinances, and regulations principally relied upon, set out verbatim or their pertinent provisions appropriately summarized.

(D) A jurisdictional statement of the date on which judgment was entered, whether the judgment is final and disposes of all claims by all parties or whether it is a partial final judgment entered under Civil Rule 54(b), and the legal authority of the appellate court to consider the appeal.

(E) A list of all parties to the case, without using "et al.," or any similar indication, unless the caption of the case on the cover of the brief contains the names of all parties. This list may be contained in a footnote.

(F) A statement of the issues presented for review. In cases of cross-appeal, the cross-appellant may present a statement of the issues presented for review which would require determination if the case is to be reversed and remanded for further proceedings in the trial court. In the event that the decision is affirmed on the appeal, such issues on the cross-appeal may be deemed waived by the appellate court.

(G) A statement of the case, which shall provide a brief description of the case and a concise statement of the course of proceedings in, and the decision of, the trial court. Appellant shall state the facts relevant to each issue, with references to the record as required by paragraph (c)(8), in this section or in the appropriate argument sections.

(H) A discussion of the applicable standard of review. (If the brief concerns several issues with different standards of review, the discussion of each issue should be preceded by a discussion of the standard of review applicable to that issue).

(I) An argument section, which shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes, and parts of the record relied on. The section may be preceded by a summary. Each major contention shall be preceded by a heading indicating the subject matter. References to the record shall conform to the requirements of paragraph (c)(8).

(J) **A short conclusion stating the precise relief sought.**

(K) If the appeal concerns a property division in a divorce case, an appendix consisting of a table listing all assets and liabilities of the parties as reflected in the record, including the trial court's findings as to the nature (marital or individual), value, and disposition of each asset or liability.

(8) *References in Briefs to the Record.*

(A) ***References in Cases in Which Excerpts are Prepared.*** References in the briefs to parts of the record reproduced in an excerpt shall be to the pages of the excerpt at which those parts appear. The form for references to pages of the excerpt is [Exc. ____]. Briefs may reference parts of the record not reproduced in an excerpt. The form for references to pages of the transcript is

[Tr. ____] and to pages of the trial court file is [R. ____]. The form for references to untranscribed portions of the electronic record is [CD (#), at Time 00:00:00 or Tape (#), at Log 00:00:00].

(B) ***References to be Included.*** If reference is made to evidence of which the admissibility is in controversy, reference shall be made to the pages of the transcript at which the evidence was identified, offered, and received or rejected. Appellant's brief shall indicate the pages of the record where each point on appeal was raised in the trial court. If the point on appeal was not raised in the trial court, the brief shall explain why the point is raised for the first time on appeal. Failure to comply with the requirements of this paragraph may result in return of the brief as provided in paragraph 11 of this subdivision.